

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	CIV 10-00904 JCH/KBM
)	
v.)	
)	
ROBERTS TRUCK CENTER OF NEW MEXICO,)	
LLC, ROBERTS TRUCK CENTER OF TEXAS,)	
LLC, ROBERTS TRUCK CENTER, LTD, AND)	
ROBERTS TRUCKCENTER HOLDING)	
COMPANY, LLC.)	
)	
Defendants.)	
)	

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against Roberts Truck Center of New Mexico, LLC, Roberts Truck Center of Texas, LLC, Roberts Truck Center, Ltd., and Roberts Truck Center Holding Company, LLC. (“Defendants” or “Roberts”) to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. In the First Amended Complaint, the Commission alleged that Katherine Abernathy and a class of female employees, including Karen Tate, Celena Woody, and Renae Pilcher, were subjected to sexual harassment by their co-worker. The Commission also alleges that Katherine Abernathy suffered retaliation with respect to the terms, conditions or privileges of her employment, and was terminated because she opposed unlawful employment practices.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This decree resolves all claims of the Commission against Defendants on behalf of Charging Party Katherine Abernathy [hereinafter “Abernathy”] and the class of females, including claims for back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs arising out of the issues relating to this lawsuit.
2. The Court has jurisdiction of the subject matter of this action and of the parties.
3. The terms and provisions of the Consent Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties are adequately protected by this Consent Decree. The entry of this Decree does not constitute a finding of any violation of the law, but instead represents a mutual agreement entered to advance the best interests of the Parties and Claimants and to facilitate the goals of Title VII.
4. This Consent Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of Defendants, the Commission and the public.

SCOPE OF DECREE

5. Unless expressly stated otherwise the provisions of this Decree apply to each of the Defendants and to each Roberts Truck facility and any locations acquired during the duration of the Decree, including the following:

Oklahoma City, OK; Ardmore, OK; Enid, OK; Wichita, KS; Salina, KS; Amarillo, TX; Lubbock, TX; Midland, TX; Abilene, TX; San Angelo, TX; Wichita Falls, TX; Albuquerque, NM; Farmington, NM.

INJUNCTION

6. Defendants, their owners, partners, stockholders, managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with them, are enjoined from discriminating against any employee because of his or her sex, including subjecting employees or individuals to sexual harassment. This injunction will remain in effect for the duration of the Decree at any location described in paragraph 5.
7. Defendants, their owners, partners, stockholders, managers, agents, officers, employees, successors and assigns and all persons in active concert or participation with it, are enjoined from retaliating against any employee or individual because the employee or individual has (a) opposed practices made unlawful by Title VII or a state equal employment opportunity statute, (b) filed a charge of discrimination, including sexual harassment, (c) assisted or participated in the filing of a charge of discrimination, including sexual harassment, (d) assisted or participated in an investigation or proceeding under Title VII or a state equal employment opportunity statute, or (e) filed an internal complaint of discrimination, including sexual harassment. This injunction will remain in effect for the duration of the Decree at any location described in paragraph 5.

RELIEF TO CHARGING PARTIES AND CLASS

8. In accordance with this Decree, within ten (10) business days of entry of this Decree and receipt of W-9 by each Claimant, Defendants shall pay the total amount of \$ 300,000.00 ("the settlement amount") to resolve the EEOC's claims for monetary relief, apportioned as follows:

- 8.1 Abernathy: compensatory damages of \$130,000.00.
- 8.2 Karen Tate: compensatory damages of \$110,000.00.

8.3 Celena Woody: compensatory damages of \$30,000.00.

8.4 Renea Pilcher: compensatory damages of \$30,000.00.

The Commission retains the sole discretion to apportion the settlement amount among the eligible class claimants.

9. For the amounts listed above, paid in settlement, Defendants shall issue a form 1099 to each payee. Claimants are responsible for payment of their share of any taxes on the respective sums paid to each claimant.

10. Defendants will not condition the receipt of individual relief on Abernathy's or any class member's agreement to (a) maintain as confidential the terms of this decree or the facts or allegations underlying the litigation or (b) waive her statutory right to file a charge with any federal or state anti-discrimination agency.

11. The checks provided for in Paragraph 8 of this Decree shall be made payable directly to each of the individuals entitled to relief under this Decree, in the amounts designated by the Commission, and mailed within ten (10) days of entry of the Decree to the addresses provided by the EEOC.

12. Within five (5) days of issuance of the checks required by Paragraph 8 of this Decree, Defendants shall submit a copy of the checks and any related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

13. In response to any employment inquiries or reference checks concerning Katherine Abernathy or any of the class members entitled to relief under this Decree, Defendants shall provide neutral employment references in the form of Exhibit A. This provision shall remain in

force for so long as any class member uses Defendants as a reference and is not limited to the duration of this Decree.

14. Defendants shall not take any action against Abernathy, any class member, any witness in this proceeding or any other individual in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

15. Defendants shall provide each class member with an oral apology from the managers of the Farmington Facility, Brent McLemore and John Kappers. Defendants shall consult with EEOC as to mutual arrangements for the oral apology.

DEFENDANTS' CORRECTIVE POLICIES AND PRACTICES

Policy Revision

16. Defendants will continue to institute and carry out policies and practices that provide a work environment free from sex discrimination and retaliation, including policies, procedures and practices to prevent sexual harassment of its employees and other individuals, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual, without retaliation. To assist Defendants in their efforts to provide a work environment free of sex discrimination, sexual harassment, and retaliation, Defendants will take the actions provided for in Paragraphs 17 through 22

17. Within ninety (90) days of the entry of this Decree, Defendants shall review any existing policies on sex discrimination, including sexual harassment and retaliation, and make any changes necessary so that the policies and procedures comply with Title VII. The policy and procedure statements that are provided to Defendants' employees should be designed to present easily understood, convenient, consistent, confidential and reliable procedures for reporting

incidents of sexual harassment and retaliation occurring at Defendants' facilities in the United States. Defendants shall ensure that their written policy includes statements that (a) employees have the right to complain directly to EEOC or any state equal opportunity agency; (b) managerial personnel at all levels of management have a responsibility to promptly report all incidents of alleged sexual harassment to the Defendants' corporate HR department; and (c) that any retaliation or reprisal against an individual who has made a complaint, or who has provided evidence in connection with a complaint, will not be tolerated by Defendants and could lead to disciplinary action up to and including termination of employment. After reviewing and making any necessary revisions to its policies, Defendants shall distribute the revised sexual harassment and non-retaliation policies, by distributing the revised policies and complaint procedures to each of its current full-time and part-time employees within one hundred twenty (120) days of entry of the Decree; posting the policies and complaint procedures in a location where other employee notices are posted; and giving a copy of the policy to each new employee hired, within 10 days of hire. After this distribution, the policy shall also be made available on the Company intranet.

Training

18. Annually, from the date of entry of the Decree until the ending date of the Decree, Defendants shall conduct training for all employees on what constitutes employment discrimination, including sexual harassment and retaliation. Training will include notification and discussion of the Defendants' policy and procedures for registering complaints of harassment and discrimination. Defendants agree that said training will also counsel employees on the disciplinary actions for engaging in such discriminatory behavior. Defendants agree that

said training will include the Defendants' non-retaliation policy. All training under this Paragraph 18 shall be at Defendants' selection and expense. The training will be conducted as follows:

18.1 *Non-managerial Employees*

Defendants will require non-managerial employees at all of Defendants' facilities in the United States to receive one (1) hour of training per 12 month period following entry of the Decree regarding workplace discrimination, with emphasis on sexual harassment and retaliation. Defendants agree that at least two (2) training sessions for all non-managerial employees must be held during the term of this Decree. Additionally, Defendants will require new employees to receive this training within thirty (30) days of being hired.

18.2 *Managerial and Supervisory Employees*

Defendants will require all individuals who work in a managerial or supervisory capacity at any of Defendants' facilities in the United States to receive at least two (2) hours of training per 12 month period following entry of the Decree regarding Title VII and other federal anti-discrimination laws. Defendants agree that at least two (2) training sessions for all managerial employees must be held during the term of this Decree. The training must directly address harassment, retaliation, and discrimination based on sex. Additionally, Defendants will require employees newly hired or promoted into a managerial or supervisory position to complete the requisite two (2) hours of training within forty five (45) days of being hired or promoted.

18.3 *Human Resource Employees*

Defendants will require its Human Resource manager to receive at least four (4) hours of

training *annually* regarding Title VII and other federal anti-discrimination laws. This training must directly address harassment, retaliation, sex discrimination, sex harassment investigations and accepted methods to prevent and promptly correct sexual harassment. Additionally, Defendants will require employees newly hired or promoted into the Human Resource manager position responsible for Defendants' facilities in the United States to complete four (4) hours of general EEO training within forty five (45) days of being hired or promoted into the Human Resource manager position.

19. Defendants agree that the first such training session for each employee group identified in Paragraph 18, above, will take place within one hundred fifty (150) days after entry of this Decree. Defendants agree that all personnel shall both register and attend the training sessions.

Individual Ineligible for Rehire

20. Defendants agree that they shall never rehire Larry Leyva at any of Defendants' facilities in the United States. To assure that Leyva is never rehired by Defendants, Defendants will place a document on the top of Leyva's personnel file that reads, "Not Eligible for Rehire at any facility in the United States." If Defendants maintain any computerized personnel file for Leyva, such computerized file must also be annotated to reflect that he is not eligible for rehire.

Notice Posting

21. Within thirty (30) days of the entry of this Decree, and continuously for the duration of this Decree, Defendants shall post the Notice attached to this decree as Exhibit B at all of Defendants' New Mexico facilities. This Notice shall be the same type, style and size as in Exhibit B. Also, within thirty (30) days of the entry of this Decree, and continuously for the duration of this Decree, Defendants shall post the Notice attached to this decree as Exhibit C at

all of Defendants' other facilities in the United States. This Notice for non-New Mexico facilities shall be the same type, style and size as in Exhibit C. These Notices shall be posted in prominent places frequented by employees of Defendants' facilities.

REPORTING BY DEFENDANTS AND ACCESS BY EEOC

22. Defendants shall separately report in writing to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, beginning six months from the date of entry of this Decree, and thereafter every six months for the duration of this Decree. The report shall contain the following information:

22.1 Any changes, modifications, revocations, or revisions to Defendants' policies and procedures which concern or affect the subject of sex discrimination, sexual harassment, and/or retaliation.

22.2. The name, address, position, social security number, and telephone number of any employee who during the reporting period has made allegations of sex discrimination, sex harassment, or retaliation arising from activities in Defendants' New Mexico facilities. As to each complainant identified, the nature of the complaint, investigatory efforts made by Defendants, and the corrective action taken, if any, shall be specified. This provision [¶ 22.2] shall only apply to Defendants' New Mexico facilities.

22.3 A Declaration from Defendants' Human Resources manager or President that the training required by paragraph 18 of this Decree was completed, that the subject matter(s) required to be covered in the training sessions were covered, and that all employees required by this Decree to be trained were provided the training pursuant to

the terms of paragraph 18 of this Decree.

22.4. A Declaration from Defendants' Human Resources manager or President that Defendants have complied with paragraphs 8 through 22 of this Decree, including a copy of the document placed in the personnel files of Mr. Leyva noting ineligibility for rehire and that the Notice required in paragraph 21 of this Decree was posted and the locations where it was posted.

COSTS AND DURATION

23. Each party shall bear its costs and attorney's fees incurred as a result of this action or through the entry of this decree.

24. The duration of this Decree shall be two (2) years from its entry. This Court shall retain jurisdiction of this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this decree.

25. In the event that the Commission believes that Defendants have failed to comply with any Consent Decree provisions(s) during the term of this Consent Decree, it shall:

- a. notify Defendants in writing of the alleged non-compliance by overnight mail to both the counsel and the corporate officer who sign this Consent Decree on behalf of Defendants, using addresses shown in connection with their signatures below, and,
- b. afford Defendants sixty (60) business days after service of such notice to remedy the non-compliance.

26. If Defendants have not remedied the alleged non-compliance within sixty (60) business days, the Defendants and the EEOC agree to mediate the dispute through a United States Magistrate as mediator. If the mediation is unsuccessful, the EEOC may petition the Court to

enforce the terms of this Consent Decree at any time during which this Court maintains jurisdiction over this action.

27. This Decree shall expire by its own terms at the end of two (2) years after entry, without further action by the parties.

28. The parties agree to entry of this Decree subject to final approval by the Court.

ENTERED AND ORDERED this 29th day of September, 2011.



THE HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO:

Electronically filed

/s/ Mary Jo O'Neill
Mary Jo O'Neill
Regional Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Phoenix District Office
3300 N. Central Avenue
Suite 690
Phoenix, Arizona 85012

/s/ Blaine Roberts per Doc. 45 filed 9/28/11
Blaine Roberts
Member, President

ROBERTS TRUCK CENTER HOLDING
COMPANY, LLC

4534 Canyon Drive
Amarillo, TX 79109-5611
(806) 355-9771

APPROVED AS TO FORM:

Electronically filed

/s/ Loretta Medina
Loretta Medina
Senior Trial Attorney

Christina Vigil
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Albuquerque Area Office
505 Marquette NW, Suite 900
Albuquerque, New Mexico 87102-2189
Telephone: (505) 248-2530

Attorneys for Plaintiff

/s/ Kelly Utsinger per Doc. 45 filed 9/28/11
Kelly Utsinger

Underwood Wilson Berry Stein & Johnson
P.O. Box 9158
Amarillo, TX 79105-9158
(806) 376-5613
Fax: (806) 349-9476
Email: Kelly.Utsinger@uwlaw.com

Aaron C. Viets
Rodey, Dickason, Sloan, Akin & Robb, P.A.
P.O. Box 1888
Albuquerque, New Mexico 87103
505-766-7588
Fax: 505-768-7395
Email: aviets@rodey.com

Attorneys for Defendants

EXHIBIT A (Letters of Reference)

To Whom It May Concern:

_____ (employee name) worked for Roberts Truck Center in Farmington, New Mexico from _____ (hire date) to _____ (end date). Ms. _____ held the positions of _____ during her tenure with Roberts.

Sincerely,

Roberts Truck Center, Official

**EXHIBIT B (NOTICE TO ALL EMPLOYEES OF ROBERTS TRUCK CENTER
OF NEW MEXICO, LLC)**

It is unlawful under federal law (Title VII of the Civil Rights Act of 1964) and state law to discriminate against an employee on the basis of sex in hiring, firing, compensation or other terms, and conditions or privileges of employment, including sexual harassment. It is also unlawful under federal and state law to retaliate against any individual who complains of harassment.

Roberts Truck Center prohibits all forms of sex discrimination, including sexual harassment. Prohibited sexual harassment includes, but is not limited to, the following conduct:

- a. unwelcome touching of a sexual nature;
- b. unwelcome comments, including comments regarding intimate body parts, or clothing and discussion of sexual jokes or sexual behavior;
- c. unwelcome requests for dates, sexual favors and propositions
- d. unwelcome distribution in the workplace of cartoons, pictures or drawings of a sexual nature; and
- e. unwelcome display of pornographic material in the workplace.

Roberts Truck Center shall not discriminate on the basis of sex and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a complaint alleging discrimination.

If you believe you are being sexually harassed, discriminated against based on sex or retaliated against you should report this to David Park or the HR manager who may be contacted at 1-800-692-4430.

If you believe you have been discriminated against or retaliated against in the Defendants' workplaces, you always have the right to seek assistance from any EEOC office or state fair employment practices agency in your area. In New Mexico, you may contact :

EEOC Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102, (505) 248-5202 or 1-800-669-4000.

Or

NM Department of Workforce Solution, Human Rights Bureau, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838 or 1(800) 566-9471.

EXHIBIT C (NOTICE TO ALL EMPLOYEES OF ROBERTS TRUCK CENTER)

It is unlawful under federal law (Title VII of the Civil Rights Act of 1964) and state law to discriminate against an employee on the basis of sex in hiring, firing, compensation or other terms, and conditions or privileges of employment, including sexual harassment. It is also unlawful under federal and state law to retaliate against any individual who complains of harassment.

Roberts Truck Center prohibits all forms of sex discrimination, including sexual harassment.

Prohibited sexual harassment includes, but is not limited to, the following conduct:

- a. unwelcome touching of a sexual nature;
- b. unwelcome comments, including comments regarding intimate body parts, or clothing and discussion of sexual jokes or sexual behavior;
- f. unwelcome requests for dates, sexual favors and propositions
- g. unwelcome distribution in the workplace of cartoons, pictures of drawings of a sexual nature; and
- h. unwelcome display of pornographic material in the workplace.

Roberts Truck Center shall not discriminate on the basis of sex and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a complaint alleging discrimination.

If you believe you are being sexually harassed, discriminated against based on sex or retaliated against you should report this to David Park or the HR manager who may be contacted at 1-800-692-4430.

If you believe you have been discriminated against or retaliated against in the Defendants' workplaces, you always have the right to seek assistance from any EEOC office or state fair employment practices agency in your area.